IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 226 OF 2007

Mr. R. S. Keluskar,)
residing at E.S.I.S. Hospital Quarters,)
Type III, D-63, Akurli Road, Kandivli)
(East), Mumbai – 400 101.).. .. Petitioner.

Versus

1) Union of India, through)
Railway Ministry, Rail Bhawan,)
New Delhi.)

2) The General Manager,)
Western Railways, Churchgate,)
Mumbai.)

3) The Additional Registrar,)
Railways Claims Tribunal,)
D'Mello Road, V.T. Mumbai.).. .. Respondents.

Petitioner present in-person.

Mr. A. H. Patil for Respondent No.2.

CORAM : SWATANTER KUMAR, C.J. &

DR. D.Y.CHANDRACHUD, J.

RESERVED ON : 31ST JULY, 2007.

PRONOUNCED ON : 23RD AUGUST,2007.

JUDGMENT : (Per Swatanter Kumar, C.J.)

1. The petitioner in this petition, Mr. R. S. Keluskar, who is an advocate practising in the Railway Claims Tribunal at Mumbai, filed a claim application before that Tribunal on behalf of one Mr. Jayesh Sharad Bhavsar. This claim application was contested on behalf of the Railway. It was stated in the claim application that the claimant had fallen down from the local train and fingers of his right leg came below the wheel of the local train resulting in permanent partial

disablement. In these circumstances he claimed the compensation of Rs.5,00,000/- . A reply was filed wherein it was stated that the accident in question was not an untoward incident within the meaning of Section 123(c) of the Railways Act, 1989 as he had trespassed on the track and not fallen from the train. It was further stated that the applicant is put to strict proof thereof.

2. This claim application was dismissed by the Tribunal vide its order dated 6th February, 2006, which reads as under:

> "A perusal of record shows that appearance of the Counsel for the Applicant is highly irregular since long and is causing delay in the disposal. Sufficient concession has been granted to him on the ground that he has filed a PIL in the Honourable High Court. However, the Applicant has brought nothing to our notice that there is any stay of proceedings or any direction has been issued to this Tribunal.
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> The claim application is, therefore, dismissed in default."

3. The petitioner has filed this petition in his own capacity without signature of the Claimant or appropriate authority to him to file the present petition, claiming the following reliefs :

(i) To issue writ of certiorari or any other appropriate writ, order or direction of the same nature in exercise of its jurisdiction under Article 226 of the Constitution of India;

(ii) To award compensation of Rs.6,28,992.00 including 50% penalty and 12% interest for the 7 years.

(iii) To set aside the dismissal order of the trial court n original claim application no. 109/2000 before the Railways Claims Tribunal at Mumbai.

(iv) To issue order in respect of Section 123(c)(2) which includes catching of the train as per definition clause 2(31)(b).

(v) To act like a mini Parliament and strike down Section 124A (a),(b),(c),(d) and (e).

(vi) To grant such further and other reliefs as may be found necessary in the circumstances of the case; and

(vii) To award costs.

4. The writ petition was contested on behalf of the Union of India. It was stated that the present writ petition is misconceived and has been filed with malafides and is neither maintainable on facts nor on law. It is further averred that the injured was hurt by a local train and was treated at Bhagwati Hospital, Borivali and after initial

treatment was taken to a private hospital, namely, Diamond Hospital and thereafter to Ashwini Hospital at Colaba. The claim application filed by him was dismissed. He was a trespasser on railway track and there was no responsibility on the part of the Railway to pursue the said claim. The said claim was rejected. In addition thereto, it is stated that the petitioner in the present petition, in his own capacity, has earlier filed a Public Interest Litigation being No.2361 of 2005, which was dismissed by a detailed order dated 8th June, 2006 where similar reliefs were claimed and hence the present writ petition is an abuse of the process of law and, in any case, the provisions of Section 123(c)(2) and Section 124A of the Railways Act, 1989 are properly constituted and valid, and serve greater public interest.

5. At the very outset we must notice that in the writ petition though the petitioner has referred to filing a claim petition on behalf of the injured, but nowhere in the writ petition a statement has been made that the said claim petition was dismissed as back as on 6th February, 2006. He has not given details of dismissal nor annexed copy of the order though in his prayer he has prayed for setting aside

of the said order. Furthermore, no detailed reference has been made by him in the entire petition that he had earlier filed a writ petition, being No. 2361 of 2005, which was dismissed on 8th June, 2006. In other words, the petitioner has withheld true and material facts which were within his knowledge and thus has filed the present writ petition which ex facie suffers from factual falsity. Besides this, the petition is also an abuse of the process of court as the relief claimed by the petitioner in the writ petition on behalf of the injured, whose authority / power of attorney has not been placed on record. Though he has prayed for compensation of Rs.6,28,992/-, the claim is in apparent contradiction to the claim raised before the Tribunal which, as noted above, was rejected. The above obviously means that the order was within the knowledge of the present petitioner and he had intentionally withheld the same from the Court. As far as vires of the provisions of the Act are concerned, a writ petition of the petitioner was already dismissed by a detailed order of the Division Bench of this Court (Mr. R. M. Lodha and A. S. Bagga, JJ.) on 8th June, 2006. In the order, the Division Bench, despite the fact that the present petitioner remained absent, examined the details of the case, noticed

the challenge to the provisions of Section 124A of the Railways Act, 1989 and held that the concept of contributory negligence was neither introduced in the said provision nor it was recognised. Further the Court held that the period of limitation could not be removed as claimed by the petitioner in that petition. The petitioner again claimed the same relief in the present writ petition though he had worded the petition to cover the ambit of Section 123 of the Railways Act, 1989, without producing any fresh material and the petitioner ultimately wants to get compensation, which claim has already been rejected by the Tribunal. It may be noted that the order of the Division Bench dated 8th June, 2006 has already attained finality and has not been challenged by the petitioner so far. It appears that the petitioner is filing petition after petition on the same cause of action and that too without the consent or authority of the injured. No documents whatsoever have been placed on record to show that the present writ petition has been filed in accordance with law and after taking due authority.

6. We may refer to certain basic principles governing filing and

entertaining of the writ petition in the present time. The Division Bench of this Court in the case of PIL Writ Petition No. 14 of 2007 (***Kandivali Education Society College Alumni & anr. v/s Majoj J. Joshi & Ors.***) has held as under:

> "6. Here is a person who was appointed as a Lecturer 8 years back and has discharged the functions of a Lecturer for all this time. There is no explanation rendered by the petitioner why they did not approach the Court for all these years, if they were genuinely concerned with maintenance of education standards of the University. The present litigation *ex facie* appears to be a private litigation in the garb of a Public Interest Litigation. The principles enunciated by the Supreme Court in the cases of **Kusum Lata vs. Union of India and Ors.** (2006) 6 Supreme Court Cases 180; **Dattaraj Nathuji Thaware vs. State of Maharashtra and Ors.** (2005 1 Supreme Court Cases 590; **Gurpal Singh vs. State of Punjab and Ors.** 2005 (5) Supreme Court Cases 136 and **Dr. B. Singh vs. Union of India and Ors.** (2004) 3 Supreme Court Cases 363, are clear that where the private interest is more significant than a public interest or where the litigation is for an ulterior motive and is intended to settle personal vendetta rather than public good, the Court should essentially dismiss such writ petitions. In the case of **Dr. B. Singh (supra)**, the Supreme Court while observing that the Courts should discourage such litigations, held as under:
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> > "16. As noted supra, a time has come to

weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilised for disposal of genuine cases. Though in *Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra* (1998) 7 SCC 273: 1998 SCC (L&S) 1802; AIR 1999 SC 114 this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Apart from the sinister manner, if any, of getting such copies, the real brain or force behind such cases would get exposed to find out the truth and motive behind the petition. Whenever such frivolous pleas, as noted, are taken to explain possession, the court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be

> desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforestated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts."

> 7. The truth as it emerges from the facts on record is clear that the present writ petition as filed is not intended to achieve any public object, goal or interest. The petition, at the face of it, is frivolous. It is also noteworthy that the petitioners are well aware about the entire litigation between the respondent no.1, the University and the College. Still they have never made any attempt to intervene or prayed for impleadment in such proceedings. The attempt appears to be to continue or prolong the litigation on one pretext or another."

7. The main and basic feature of a public interest litigation is that the litigation must be for a larger public interest, must be free of action and which should not be determined malafide, malicious and abuse of the process of the Court, it must not be individual or private interest oriented. Repeated litigation filed before the Court could neither determine as fair nor proper. The public interest litigation must get complete facts and there should be definite averment without any intent to withheld from the Court relevant and necessary

facts. In the case of **Shri Sachidanand Pandey and Anr. v/s The State of West Bengal & Ors.,** AIR 1987 Supreme Court 1109, the Court clearly indicated that it is necessary to enunciate the principles to avoid the litigants, who rush to the court and file cases in public interest, some restraint need to be exercised. The present case, besides being an abuse of the process of court, does not also satisfy the basic ingredients of a public interest litigation. The record sufficiently reflects the individual interest of the petitioner. The petition has been filed without authority of law and at the same time is hit by the principles of constructive res judicata. The petitioner could have claimed necessary reliefs in the previous writ petition. Firstly, the petitioner claimed the reliefs even in the earlier writ petition filed by him being Writ Petition No.2361 of 2005 and whatever he did not claim which he ought to have claimed he would be barred from claiming in the present writ petition. The writ petition, thus is an abuse of the process of Court and should be dismissed.

8. The petitioner, who claims to be a practicing advocate,

should have exercised greater restraint and as a responsible member of noble profession should not have filed such petitions repeatedly.

10. Consequently, writ petition is dismissed, though we are not imposing any costs in the present case.

Sd/-

CHIEF JUSTICE

Sd/-

DR.D.Y.CHANDRACHUD, J.

TRUE COPY

(A.M.TAILOR)

Private Secretary to the

Honourble Judge